

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ERNEST M. ANDERSON,

Petitioner,

V.

NEIL TURNER,

Respondent.

CASE NO. 3:13 CV 2748

JUDGE PATRICIA A. GAUGHAN

MEMORANDUM OF OPINION
AND ORDER

On December 17, 2013, petitioner *pro se* Ernest M. Anderson, an inmate at the North Central Correctional Institution, filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. An amended petition (hereafter “the petition”) was filed on January 13, 2014. Petitioner challenges his convictions in August 2013, in the Lucas County Court of Common Pleas, for possession of cocaine, trafficking in cocaine, aggravated possession of drugs, aggravated trafficking in drugs, trafficking in marijuana, and tampering with evidence.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for the petition, Anderson asserts: his convictions are “nullities,” the trial court lacked legitimate authority, and his sentences are “void ab initio.” Without regard to whether or not Anderson has set forth a cognizable federal habeas claim, it is apparent on the face of the petition that he has yet to file a direct appeal, an avenue still available to him under

Ohio Appellate Rule 5. His petition is thus premature.

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
UNITED STATES DISTRICT JUDGE

Dated: 4/23/14